

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

InterCement Brasil S.A., *et al.*,

Debtors in a Foreign Proceeding.

Case No. 24-12291 (MG)

Jointly Administered

**ORDER GRANTING PROVISIONAL RELIEF AND REQUIRING
FURTHER BRIEFING**

The Court held a hearing in these Chapter 15 cases on December 16, 2024.

Counsel for the Foreign Representative and for the Ad Hoc Group of Noteholders appeared at the hearing.

These cases were filed after the Foreign Debtors failed to obtain approval of their proposed EJ Plan in Brazil. The Foreign Debtors then filed RJ Proceedings in Brazil. Two of the Foreign Debtors also have proceedings pending in other countries—one in the Netherlands and one in Spain. The Foreign Representative seeks recognition of all of the recently-filed RJ Proceedings as foreign main proceedings. The Ad Hoc Group previously opposed recognition of the EJ proceedings of two of the foreign debtors as either main or non-main proceedings, arguing instead that the center of main interest (“COMI”) for two of the Foreign Debtors were, respectively, in the Netherlands and in Spain. The Ad Hoc Group reserves its rights to do so again.

To preserve the status quo, the Foreign Representative filed a motion for provisional relief in these cases. (“Motion,” ECF Doc. # 5.) Counsel for the Ad Hoc Group does not oppose the request for provisional relief as long as its rights are preserved to contest COMI or establishment of the Foreign Debtors. During the December 16, 2024 hearing, the Court granted the request for provisional relief and directed counsel to

submit a consensual form of Order. Absent further order of this Court, the provisional relief shall remain in place until 5:00 pm, March 25, 2025, when similar relief granted by the court in Brazil expires.

Counsel also reported that they are close to reaching agreement on a Stipulation permitting the use of the record in the prior Chapter 15 cases in connection with the issues in these Chapter 15 cases. Subject to review of the proposed Stipulation, the Court expects to approve it. Counsel also reported that they are continuing discussions about sharing financial information concerning the Foreign Debtors. Counsel should continue these discussions and update the Court on any developments in that regard.

During the hearing, the Court also identified additional issues the parties need to address in these cases. The law in this Circuit is settled that a foreign debtor's COMI is determined as of the time of the filing of the Chapter 15 case—in this case, December 9, 2024. That means here the time of the filing of the most recent Chapter 15 cases provides the time for determining COMI. It is not clear whether that is also the time for determining whether the foreign debtor has an “establishment” where the foreign proceeding has been filed, a prerequisite for a foreign non-main proceeding. This raises the question whether, for example, COMI has shifted to Brazil for the Dutch and Spanish entities, even if that was not the location of their COMI's during the prior Chapter 15 cases or when those foreign proceedings were filed. The locus of reorganization or liquidation efforts may shift the COMI of a foreign debtor.

The Court therefore directed further briefing on these additional questions as follows:

1. The Foreign Representative shall file its papers on or before 5:00 pm, January 15, 2025.
2. The Ad Hoc Committee shall file its papers on or before 5:00 pm, January 31, 2025.
3. The Foreign Representative may file a Reply on or before 5:00 pm, February 7, 2025.
4. The Court will schedule a hearing after all filings are completed.

The Court also requested counsel to file updates to the Court on further developments with respect to the proceedings in Brazil, the Netherlands and Spain.

IT IS SO ORDERED.

Dated: December 16, 2024
New York, New York

Martin Glenn

MARTIN GLENN
Chief United States Bankruptcy Judge